

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 8338 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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SHARAD J DAVE  
VERSUS  
STATE OF GUJARAT

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Appearance:

MR GM JOSHI for the Petitioners  
MR HH PATEL for Respondents

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 15/08/1999

C.A.V. JUDGMENT

1. Rule. Shri H.H. Patel waives service of rule on behalf of the respondents. On the consent of the

learned counsel for the parties, the matter is taken up for final hearing today.

2. The petitioners were appointed as Grass Chowkidars in the year 1982 and since that day they are performing their duties on the same post. In 1982 the predecessors of the petitioners were promoted and absorbed on the post of Forest Guards. It is the say of the petitioners that except in Bhavnagar Division, in all other Divisions, the post of Grass Chowkidars and Grass Watchmen have already been redesignated as Forest Guards and the duties of both these posts and that of Forest Guards are same and identical. The petitioners made various representations to the higher authorities for their redesignation as Forest Guards but nothing has been done. It is specifically stated by the petitioners that since more than 16 years they are performing the same duties which are being performed by the Forest Guards such as protection of forests, maintaining nursery and supervision, issuing transit passes as well as preparing documents for transportation of Forest products and hence they are eligible and entitled to be promoted to the post of Forest Guards. It is also the grievance of the petitioners that though they are performing the same functions they are denied equal pay for equal work. Hence, this special civil application before this Court.

3. The petitioners prayed for direction to the respondents to consider their cases to appoint them on the post of Forest Guards with effect from the date of their original appointment and confer on them all the benefits flowing from such absorption including the monetary benefits. Alternatively, they prayed that the respondents may be directed to promote the petitioners on the post of Forest Guards and confer on them all the benefits which are available to the said post.

4. This petition has been contested by the respondents. They filed the reply to the same.

5. Learned counsel for the petitioners contended that grave injustice has been done to the petitioners by the respondents, the officer of a Welfare State. They are working for last 16 years as Grass Chowkidars or Grass Watchmen but the persons who were subsequently taken as daily wagers have been given the benefit of regularisation of their services on the post of Forest Guards. Even if it is taken what the learned counsel for the petitioners contended that those persons have been given the benefits on the basis of the award of the

Industrial Tribunal and which has been confirmed by this Court, the petitioners could not have been discriminated. Their cases stand on much higher pedestal than those persons who were only given the daily wage appointment. It is further submitted that whatever decision given in the civil suit, reference of which has been made in the reply, is also of no consequence. It has next been contended that the rules framed under Article 309 of the Constitution of the Guards (Subordinate Forest Services) Recruitment Rules, 1969 is of no relevance in this matter. If the daily wagers have been given the benefits then those benefits should have been given to the petitioners also. Those daily wagers were only Plantation Watchmen. It has next been contended that earlier the Grass Watchmen, Gardeners were given the promotion to the post of Forest Guards and the cases of the petitioners should have been similarly taken. Lastly, the learned counsel for the petitioners contended that the petitioners have not been given the benefit of higher pay scale as provided under the Government Resolution of the year 1994.

6. The counsel for the respondents, on the other hand, contended that the petitioners are in the lower pay scale on the lower post than that of Forest Guards. In the rules, there is no provision for making promotion to the post of Forest Guards from the category of the persons to which the petitioners belong. It has next been contended that the Plantation Watchmen who have been appointed on daily wages were given the benefits as a result of the award of the Industrial Tribunal which has been confirmed by the Hon'ble Supreme Court to which the petitioners are not entitled. Lastly, it is contended that in case the petitioners are entitled for the benefits of higher pay scale then if they make representations to the respondents they shall consider their cases according to law.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. After having heard the learned counsel for the parties, perusing the special civil application and reply affidavit, prima-facie I find that the petitioners are subjected to manifold discrimination, sufferings as well as hardships. It is not disputed by the respondents that the persons who were identically situated to the petitioners were given promotion to the higher post of Forest Guards in the year 1978, 1980 and 1982. Rules to which reference has been made are of the year 1969 and if there was no provision for promotion to

be given from the category of the post to which the petitioners are holding to the post of Forest Guard, I fail to see how and why those persons have been given the promotion. This position has altogether remained unexplained from the side of the respondents. Similarly, the averments made by the petitioners in para 2.5 of the special civil application that except the Bhavnagar Division the post of Grass Chowkidars exist in the lower pay scale, otherwise in other Divisions this post is considered to be that of the Forest Guard in the pay scale of Rs.1350-1600 have also not been controverted by the respondents. It is really shocking that these posts are taken to be isolated posts and even the petitioners were not given the benefit of higher pay scale. It is a lowest post and even if it is taken that in the 1969 rules, channel of promotion has not been provided from this category, I fail to see what is the hurdle in the way of the respondents to make necessary amendment therein. These are the persons in the lowest ladder in service and the State of Gujarat and the officers of the Forest Department have to take care that these persons may get the promotional opportunities in service. These poor persons though serving for last more than 16 years, could not get a single promotion as well as the benefit of higher pay scale. Even if it is taken that the Plantation Watchmen who were only daily wagers have been given the benefit on the basis of the award of the Industrial Tribunal, the case of the petitioners could have also been considered similarly. I find sufficient merits prima-facie in the contention of the learned counsel for the petitioners that the case of the petitioners stand on much higher pedestal than those daily wagers. It is really shocking that the daily wagers have got all the benefits but on such a technical plea, the respondents who are the officers of a welfare State and the Welfare State are not caring for these poor persons. However, I do not consider it to be a fit case to decide it finally here on merits. These are only the prima-facie observations and the considerations which have been made by this Court and the Court is also prima-facie satisfied that it is a case which needs consideration by the State of Gujarat.

9. In the result, this special civil application is disposed of in terms that in respect of the grievances made by the petitioners in this special civil application they may file a detailed representation to the Pay Anomaly Committee constituted by the State of Gujarat, Finance Department, under its resolution No.PGR-1098-34-M Sachivalaya, Gandhinagar dated 20th May, 1998. However, in case where the Pay Anomaly

Committee considers that the matter does not fall within the terms of the Reference made to it, the petitioners may make representation to the Chief Secretary of the State of Gujarat who shall constitute a High Powered Committee under his Chairmanship with other members, namely, Secretary to the Forest & Environment Department, Finance Secretary, Law Secretary, and Principal Chief Conservator of Forests and decide this representation within a period of two months from the date of receipt thereof. In case the grievance of the petitioners are not acceptable then a reasoned order may be passed and copy of the same may be sent to the petitioners. Where the grievance of the petitioners are acceptable, the respondent No.1 is directed to give to them all the benefits for which they are found entitled by the High Powered Committee and as recommended by it. In case of difficulty liberty is granted to the petitioners for revival of this special civil application on filing a simple note. It is expected of the Pay Anomaly Committee where it is of the opinion that the case of the petitioners does not fall within the terms of Reference then that decision may be communicated to the petitioners expeditiously say within one month from the date of taking of the same so that these poor persons may then file a representation before the Chief Secretary of the State of Gujarat as directed by this Court in this judgment. The petitioners are directed to send a copy of this judgment along with their representation which they have to file to the Pay Anomaly Committee. Rule stands disposed of accordingly.

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